

June 1971

LTC No. 77

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CUSTOMARY LAND TENURE AND THE
DEVELOPMENT OF AFRICAN AGRICULTURE

by

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This paper originally appeared in an FAO Report Series. The reproduction of FAO's Report No. RP 14 "Customary Land Tenure and the Development of African Agriculture" by Professor Kenneth H. Parsons, Rome, 1971, is made in agreement with the Food and Agriculture Organization of the United Nations.

Chapter I

TENURE POLICY AS A CATALYST FOR
AGRICULTURAL DEVELOPMENT

The working rules of tenure policy define the terms of access to opportunities on the land. Such rules, be they customary or modern, specify the conditions under which land is used and the ownership of the products of the land shared, as well as the distribution of returns on investment in land. In short, the rules of tenure provide the terms of reward for effort--and thus the character of the incentives for the use or improvement of land.

However, in considering agricultural development policies it is necessary, if disillusionment is to be avoided, not to claim too much for any one aspect. This is just as true for tenure policy as it is for proposals to incorporate new technology or improved market accessibility into the agricultural economies of developing countries. It seems useful, therefore, to consider both the possibilities and limitations of tenure policies for stimulating and supporting agricultural development in tropical Africa.

We propose to analyse such issues, by first considering some of the ways in which systems of tenure arrangements are interrelated with systems of farming; and secondly how these in turn are related to the performance of the participants in the economy of agriculture.

Primary emphasis in agricultural development policy may be placed upon either the system of farming or the system of tenure; but since the two systems must function together, neither can be pursued independently of the other. Furthermore, the limits to each, and to both, are set by the degree of acceptance by the farmers. The effectiveness of the performance of farm people is the ultimate test of any system of agricultural economy.

Systems of farming, as systems of agricultural production, may be modernized in a variety of ways: this may be done by primary reliance upon individual proprietorship, or systems of group farming or combination of the two; farms may vary in size from small to large--when measured by the size of area, labour force, required investment or output; investment and capital intensification may be achieved with primary emphasis upon private or public investment; specialization and exchange may be achieved through markets or state trading. For each dimension there are in principle, an almost infinite number of possible combinations of systems.

The basic issue of tenure policy for agricultural land is that of public or private ownership of the land. With either form, if the traditional tenure systems of tropical Africa are to be modernized, the powers of the state with specific reference to land use, occupancy, transfer, etc., will need to be formalized and rigorously defined.

If land is publicly owned, then the conditions or terms upon which individuals or groups may use the land can be specified by public ordinance or administration. If the land is privately owned in something approaching free-hold then the public administration of the use or occupancy rights is indirect by defining the limits within which individuals may deal with each other--on their own volition--in the use, acquisition or disposition of land. It is approximately correct to observe that under public ownership of land, the public interest in land use and occupancy is expressed by direct administration, stipulating specific performance criteria; where land is held privately under freehold, the public interest in land use and occupancy is protected indirectly by taxes or by specifying avoidances rather than performances.

Under public ownership of land the land may be used, as in state farms, with close supervision, or participation in the actual operations, by representatives of the state. Or, land publicly owned may be let out to actual users on leases--with 99 year leases being used sometimes. Land held under leasehold of long duration provides economic opportunities to actual farmers which approximate, and may be more favourable than the conditions under which a free-holder may use the land of similar quality. The basic differences are (a) in the time horizon, the difference between holding use and occupancy rights for a term of years (however long) rather than in perpetuity;

and (b) within such time limitations leaseholders and freeholders share differently in the ownership of the reflected value of market opportunities.

Under private ownership of land where land is owner-cultivated, both the product and the land belong to cultivator. With the development of markets for farm products, the value of such market opportunities becomes assimilated to the value of land--enhancing the value of the property; where market opportunities are strictly controlled, as to prices received and required deliveries, the private ownership of land may be only a nominal privilege rather than a valuable right.

One basic premise of the acceptance of private free-hold ownership of farm land is the assumption that individuals with such interests in land will put the land to good, or even the best, uses; where this does not occur, where land held privately is not developed, or where land is not used effectively, the whole social basis for private free-hold may be called into question.

Either system of ownership of agricultural land, i.e. public or private, can be designed to accommodate the several variations in systems of farming noted in preceding paragraphs. One basic difference among the variants, however, is the nature of the alternatives open to farmers. Stated in conventional economic terms, the income of a farmer may reflect the combination of one or more sources of

income--income attributable to labour, to management or to investment. An owner-cultivator receives all three types of income and must meet the risks and qualifications for all three roles. A tenant receives the income from labour and management, but not for investment in land. A labourer or sharecropper who works under the managerial direction of other persons, receives only a labour-income. A participant in a group or collective farming system may share in these three different kinds of income in widely varying proportions according to the "shop-rules" of the concern of which he is a member. The incentives and reward for effort by farmers operate differently under the different combinations of roles.

It is not possible here to explore fully the details of the various combinations of systems of tenure either actual, or possible, in tropical Africa. In other sections some of the major innovations in African systems of farming and tenure will be noted.

The views which one holds on the possibilities of alternative tenure systems as a catalyst for the modernization of agriculture, depend partly on one's assessment of the technical problems of economic organization of agriculture (such as the importance of economies of scale, the possibilities of mechanization, the efficacy of market orientation); but more, one judges, upon the deeper considerations of the social philosophy accepted, upon estimates of the basic potential managerial abilities of the people in farming,

and the evaluation of past performances of systems in operation.

To put the issues more simply, if one's basic philosophy is such that he is convinced that improved technology is the true source of growth in agriculture and that farms must be of fairly large scale (100 acres or more), then one may well attempt to lead his country toward a system of large scale farms, likely under the management and close supervision of public officials.

By contrast if one holds the view that the ordinary village people have the potentialities for entrepreneurial responsibility and that the willing and energetic participation of farm people can be a most powerful engine of growth in the long view, then one attempts to lead his country toward a system of farming with a multitude of "family-sized" farms, supported by a tenure policy of encouraging independent farmers--probably owner cultivatorship. In such a system public guidance is by tenure rules which define the limits to, and allow, independent action by entrepreneurs.

Either of these general views can be, and has been, systematized into political philosophies, wherein the views on the significance of private property in land are as divergent as the socialists' view that property is power and even robbery--in contrast to the traditional liberal view that property can be used as a means of implementing individual liberty.

Although the long-term serviceability to a nation of any system of farming or type of tenure arrangement is no doubt determined by compatibility with the objective physical, economic and social conditions of a country, in the short term such arrangements need to make sense to rural people.

The customary tenure system is the key to the access to economic opportunities in traditional African agriculture. Where the alienation of land is strictly controlled by the group and individual farmers have only usufructory rights in land, farmer-cultivators have at best, only part-opportunities; such opportunities of land use may very well lack the time dimension essential for long term investment in land and the scale of operations which an enterprising farmer would seek. In contrast, the traditional group ownership of the land serving the basic needs of security rather than of economic progress, centres on control over allocation of opportunities for land use, rather than on the exploitation of such opportunities.

In effect the proponents of land nationalization, with the correlative authoritative procedures for the allocation and administration of land use privileges, would, as a matter of policy, assimilate land use practices and the choices of farming systems to group ownership and control, with the control being converted from a backward-looking tangle of inflexible rules into a set of arrangements in which economic progress would be stimulated by public administration rather than thwarted by traditional group control.

By contrast, the proponents of a fee-simple type of private ownership by merging group control of opportunities on the land with usufructory rights of use and occupancy would assimilate ownership to the operational requirements for efficient farms--by expanding the (part-opportunity) usufructory rights in farm land into a full or comprehensive ownership under the will of the farmer. In this way, as a matter of policy, land use and investment decisions can be combined by the farmer with the other self directed farm operations. Thus the holding of land would become more amenable to the will and needs of enterprising managers and investors, who are viewed as the agents of economic progress.

It needs to be emphasized at the outset that no set of tenure arrangements, however well designed should be considered to be fixed and final. As the objective conditions of the opportunities, abilities and aspirations of a people change, systems of tenure and of farming need to be adjusted; similarly as farming technologies are modified, market opportunities expanded and investment requirements change, systems of farming and tenure arrangements will need to be adapted. Arrangements which provide hope and security to a farming people held together by an equality of poverty may become distasteful in situations in which the ambitious and the fortunate may forge ahead by their own efforts and ingenuity. Whether land tenure is considered to present major problems for agricultural development policy seems to depend

upon two further considerations: one is the time horizon accepted in development planning; the other, more philosophical in character, is based upon one's evaluation of the relative significance of social relations in comparison with physical relations in agricultural production. At this moment in history there is a widespread faith that agricultural development can be achieved by near-exclusive reliance upon increasing man's control over physical nature.

It is not to be questioned that substantial rates of economic growth--measured in terms of increases in physical product--may be achieved for short periods of time, perhaps for decades, without consideration of social issues--through the use of science, technology and physical capital to bring physical nature more fully under the control of man. However, over long periods of time to which one refers in considering civilization, the uses of science, technology and other forms of control over physical nature must be embraced within and subordinated to human purposes. This requirement gives primacy to viewing agricultural economies as systems of social organization, as well as systems of production and marketing relations. Land tenure policies need to be viewed in this broader perspective.

CHAPTER 2

THE ROLE OF CUSTOMARY TENURE IN SUBSISTENCE AGRICULTURE

Customary tenure is an integral part of the traditional agriculture. Both have developed over long periods of time, yet neither are fixed and unchanging. Furthermore, the traditional systems of agriculture vary widely over tropical Africa, reporting adaptations to different geographical and social situations. With such variability it would be quite impossible to speak both accurately and simply about details of such systems for the whole of tropical Africa, even if empirical research were very much more adequate than at present.

In consequence this brochure is an interpretative sketch in which an attempt is made to identify the major issues of tenure policy which are implicit in the requirements for the modernization of the traditional agricultural systems of tropical Africa. Such a statement must be provisional, which at best can do no more than serve as provisions for policy formulation and further inquiry.

Traditional agriculture may also be termed subsistence agriculture---for viewed genetically the agricultural systems so characterized have been devised as survival systems of economy ensuring group survival. In fact, one of the most challenging aspects of

the study of customary tenure in Africa is that they are in fact a vast network of rules and procedures by which people have ensured group survival and cultural continuity.

The economic development of agriculture which can be achieved only by the combined use of the powers of the state and the productive powers of a modern system of economy (of investment, specialization and exchange) can bring and is bringing great pressures upon the traditional societies and especially upon the customary systems of tenure.

Given the high rates of population growth - with a prospect of twice as many people in tropical Africa at the end of this century as at present, there is no way to avoid great changes, even changes of revolutionary proportions, in the agricultural economies - due to both the demand for increased products and the needs for economic opportunities on the land.

In this statement, an attempt is made to see the policy issues presented by the prospective modernization of agriculture in a long-time perspective. Such a time horizon requires that recognition be given to the primacy of human relations even in an agricultural system which would exploit the potentialities of modern technology. Given this perspective, it is necessary that a serious attempt be made to understand the nature and function of a customary tenure system - in relation to the concurrent system of farming; and to

achieve this in ways which make possible the use of human intelligence in the gradual modernizing transformation of traditional subsistence agricultural systems.

As subsistence economies these agricultural systems are pre-market, with the interdependence of participants limited largely to exchange among small groups; as traditional, these systems are both pre-investment and pre-scientific types of economies.

These subsistence systems of agriculture in tropical Africa are land-based economies, wherein land use practices are supported by the customary tenure arrangements. With agriculture based upon the exploitation of the natural fertility of soil and vegetation, shifting or rotational patterns of cultivation are practised; land is cleared, at least partially, cropped a few years and then allowed to revert to bush fallow (or forest) for a rest period of regeneration. In its pristine form, such a system may have permitted land to remain fallow for a decade or two; but with the growth in the population, the periods of fallow become shortened, even to continuous cropping without rest periods of fallow. Since such systems of land use are well known, they need not be accorded much attention here. Suffice it to note that the customary systems of tenure arrangements support the alternation of land use and fallow. This is achieved by the general provision of group ownership of all the land in the community, within which collective ownership, individuals acquire and

maintain usufructory rights in land. In sum, the basic or radical ownership of agricultural land vests in the group, with established procedures whereby land use rights may be allocated to individuals.¹ In consequence some of the most difficult problems of tenure policy are rooted in the subtle inter-relationships between the group and individual interests in agricultural land.

As interpreted by an eminent African legal scholar: "The land-holding recognized by African Customary law is neither "communal" nor "ownership" (in the strict English sense of the term). The term corporate would be an apter description of the systems of land-holding, since the relation between the group and the land is invariably complex in that the right of the individual members often co-exists with those of the group in the same parcel of land. But the individual members hold definitely ascertainable rights within the comprehensive holding of the group.

.... A member's right to his holding is in the nature of a possessory title which he enjoys in perpetuity and which confers upon him powers of user and of disposition scarcely distinguishable from that of an absolute freeholder under English law. His title is, therefore, in a sense that of a part-owner of land belonging to his family but a member's portion of land cannot be sold by him or taken away from him in satisfaction of debt, though he may pledge the use of his portion for a debt!"²

The two kinds of interests in land--group and individual--are related differently to the subsistence economies of Africa. Since the basic or radical ownership of land is vested in the group, and

¹ Emphasis in this statement is placed upon customary tenures in systems cultivation, rather than in grazing economies.

² T. O. Elias, The Nature of African Customary Law, Manchester, 1956, pp. 164-165.

land rights traditionally pass from generation to generation by inheritance only; a person acquires an equitable claim to rights in the ownership of land in the group, as a birth-right. Stated differently, one's claim to a rightful share in the group-owned land is a function of his status in the family. Thus, in principle, one inherits rights in the "corporate" or group ownership of land regardless of residence or occupation. Since these birth-right claims to ownership signify that a person has the privilege of returning to his "village" at any time and claiming the right to use his share of the family lands, such claims are the major means for providing security. In effect, these birth-right interests assure to an individual the reservation right to a survival opportunity--the right to return home and engage in subsistence agriculture.

An individual or family establishes usufructory occupancy rights to particular areas of land, at least initially, by clearing the land and putting it to use. This kind of right is acquired in accordance with the ancient principle which John Locke called--acquiring property rights "by mixing one's labour with the soil" and "appropriating it from the state of the nature." Although these usufructory rights are by custom inherited in approximately the same manner as birth-right claims, with neither being saleable,

the continuation or perpetuation of this type of interest requires the continued use of the land. If land is not used for some differing periods of time, such individual usufructory rights revert to the comprehensive "corporate" or lineage group. Thus, it may be noted, it is through the usufructory right on land that land uses are incorporated into the agricultural economy as a system of production.

Since customary tenure arrangements are integral parts of subsistence-traditional agriculture, it is to be expected that the economic development of agriculture would require the support of innovations in tenure arrangements.

CHAPTER 3

MODIFYING CUSTOMARY RIGHTS IN LAND: THE PROBLEM OF SPECIFICATION

A system of land tenure is a systematization of the rules which function by specifying what different classes of persons may or may not, must or must not do, with reference to the occupancy, use, abuse or disposition of land. Such rules define the privileges and obligations, the rights and duties of persons in relation to each other, with reference to land. "A right is not held in land but against another person; thus one holds a number of rights against various people in respect of a plot of land. The term 'property' has a double use--in everyday speech to mean a physical object capable of ownership and in legal terms the rights held by a person in respect of the object."³

Rights held by a person against other persons in respect to land, however, are not self-defining or self-enforcing. The rights which a person can enjoy in the use of land, or in anything else, can be realized only if duties are imposed upon other persons. Thus the rights of a person to enjoy the use of land are dependent upon and in fact are derived from the correlative duties imposed on all other persons to permit him to enjoy such uses. The duties are

³P. C. Lloyd, Yoruba Land Law, Oxford, 1962. Chapter 4, "Some Legal Concepts," p. 60.

enforced by sanctions of authority, public opinion and economic power. In a system of customary tenure the sanctions are defined by local tradition; in a modernized tenure system, sanctions are authoritatively defined and enforced by the state, rather than by the action of local groups.

Commons has summarized the issues as: "In short, the working rules of associations and governments, when looked at from the private stand-point of the individual, are the source of his rights, duties and liberties, as well as the protected liberties of other individuals."⁴

Similarly, E. A. Hoebel, an anthropologist (considering the law of primitive societies rather than the law of the more advanced traditional societies) argues:

If there is law in primitive societies in the same sense as in ours (modernized societies), then the basic tools of the student of Western jurisprudence, though originally designed to fit the needs of the student of a system of civilized law, should also, to some degree serve the needs of the student of primitive law. The anthropologist may then find some of his tools for the study of primitive law ready-made and well designed in the fundamental legal concepts of modern jurisprudence. ⁵

⁴ J. R. Commons. Legal Foundations of Capitalism. Wisc. 1956. Commons makes a comprehensive systematic analysis of right-duty relationships and related distinctions. Commons like Lloyd (supra) and especially Hoebel, (below) accepts and builds upon the classic work of W. N. Holifield 'Fundamental Legal Conceptions' Yale 1964 (originally published in Yale Law Journal, 1913).

⁵ E. Adamson Hoebel: The Law of Primitive Man. Harvard, 1964, p.46.

Hoebel continues,

Malinowski was wholly right in his conclusion that "ownership can be defined neither by such words as 'communism' nor 'individualism' nor by reference to 'joint-stock company' system or by 'personal enterprise', but by the concrete facts and conditions of use. It is the sum of duties, privileges and mutualities which bind the joint-owners to the object and to each other."⁶

Such theoretical distinctions are noted not with the intention of undertaking here a systematic analysis of right-duty relationships with reference to land use in tropical Africa, but as a means of formulating a problem in the modification of traditional tenures. This is an attempt to identify basic issues in ways which permit the modification or modernization, rather than the total destruction of customary tenure systems. Stated differently, if it is necessary that agricultural development programmes in tropical Africa take account of and modernize systems of tenure--as well as making use of technology, markets and investment as argued in this statement, then it is essential that the basic components of the structure of both customary tenure and modern tenure systems be understood in similar analytical terms. Otherwise, there can be no avenue by which systematic thought and public action can move from one to the other.

Turning to some of the particular provisions of customary

⁶Ibid., p. 56. The citation from Malinowski, is from "Crime and Custom in Savage Society" p. 17-21.

tenure arrangements, with the above comments on right-duty relationships in mind, one right may be singled out for comment. A person holding usufructory rights in land, holds such rights against all other persons; it is the duty of all other persons to leave growing crops alone. This duty is enforced by the community sanctions. The rights of the individual to use the land are thus protected so long as he continues to use the land; also his right to use evidently extends to, and is transferred temporarily to, the pledgee--should he pledge the use of this land to another person as security for a debt. Should the right holder abandon the land, allowing it to fall into disuse, other persons are no longer duty-bound to honour his usufructory claim to the land.

Such privileges or rights of use, although hereditary in varying degrees, are allotted authoritatively by the heads of the village, family, or other group. These allocations may be termed authoritative transactions.⁷ The allowable field of discretionary action is implicit in the terms of the grant of usufructory rights to an individual. In effect, the holder of usufructory rights lacks the capacity to alienate the land (beyond temporarily pledging rights of use). In the usual case, while the authoritative heads of land-owning groups have the authority and even the duty to assign

⁷After Commons--Op. cit., p. 100-134.

or allocate usufructory rights to members of the group in need of land particularly to grow food crops, they do not on their own authority, have the power to sell the land. Only a larger group--in principle all members of the family--have the right to alienate family lands.

This brief interpretation, or formulation of the rule of inalienability in customary tenure may at least suggest, by contrast, the nature of the change in rules and social relationships that are implicit in, or would be required for, according an individual the rights to buy and sell land. Attention is directed here to changes which would occur in a situation where the rule of inalienability is relaxed sufficiently to permit a wider degree of freedom of alienation than the pledging of land by an individual land-holder. It is to be noted that the transference from one party to another of rights to use land is the procedural counterpart of any shifting of land from one use to another according to any economic rationale for optimizing land use.

In this comment on specification of rights and duties, thus far, no distinction has been made regarding the scope or extension of the rights and duties--beyond noting that the usufructory rights in farm land held by an individual run for life (if the use of the land is not abandoned) and are inheritable. More refined distinctions are necessary for an understanding of the problem at hand.

The widest scope for alienation of land in a western-type market-oriented investment economy is that of the transference of fee-simple title from a seller to a buyer. Under such conditions, a person holding fee-simple title can on his volition sell or mortgage his land; and such a transaction if properly carried out is accepted, and even validated, by authority of the state. Such a right to sell becomes in effect a part of the liberty or economic freedom of the land-holder. However, the enjoyment of this degree of individual liberty exposes the land-holder to the risk of losing his land--as through foreclosure for a debt secured by a mortgage on land. By this latter route a person and his family may be pauperized. But alienation need not be so comprehensive.

Once land ownership is understood as rights and duties in land--in terms of right-duty relationships and correlative distinctions, it is then possible to consider variations in degrees of alienation.

The renting, or leasing, of farm land which transfers the rights to use land from one party to another--is in effect an alienation of rights of use for a specified period of time. Thus one may rent land for the production of a single crop, or for a term of years (or days). This is alienation of uses for definable periods of time, for an agreed amount of consideration.

This type of alienation (for specified time periods)--the leasing or renting of land--differs from the traditional loaning of

the use of land where "tribute" is paid, in that renting is a more depersonalized type of arrangement. Landlord-tenant relationships are business arrangements even though they may run between friends or relatives.

Another way in which the degree of alienation may be limited is by restrictions upon the class of persons who may enter into transactions for the transfer of rights in land. In the traditional tenure systems of Africa, the transfer of rights to use land within the kinship group is more acceptable than between the family group and "strangers." This concept when generalized suggests that a land-market--the generalized privilege of transferring rights to use land--either for short periods of time or in perpetuity, as under fee-simple--is likely to develop first among members of the same family or kinship group.

This suggestion seems implicit, as a possibility, in the qualified way in which "sales of land" are occurring in tropical Africa, under pressure of economic change. Much of the discussion of "sale of land" in Nigeria by Meek is directed to conditional sales, where the basic condition is the consent of the members of the family.⁸

⁸C. K. Meek, Land Tenure & Land Administration in Nigeria and the Cameroons. London, 1957. Chapt. 25, p. 216-221.

There are other and less personal ways in which to limit the degree of alienation. In India, for example, in order to prevent the occurrence of absentee ownership and the renting of land--which led historically to extortionate levels of rents--several states adopted the rule as a part of their land reform programmes that farm land might be owned only by persons who cultivated the land themselves. This had the consequence not only of prohibiting absentee ownership, but also restricted the use of land as collateral for mortgages. In effect, if only "self-cultivators" were allowed to own land, then only self-cultivators could expect that they would be allowed to foreclose on a land mortgage.

Similarly, it is not uncommon in land reform or settlement programmes which allot the ownership of land to individual participants to specify that the land may not be sold and transferred to another person without consent of the administering authority. Or, the terms of the assignment of ownership to the individual may preclude the use of the land as collateral for debt--ensuring that the land-holder will not lose his land through forfeiture for debt. Thus freedom of alienation of land can be qualified in numerous ways--either by limiting the extent of the rights which may be purchased or sold, or by restricting "entry into the land market" to use a familiar term from economic analysis.

This somewhat schematic discussion of the nature of rights and duties in land, recognizing that an almost indefinite number of different kinds of rights in land may be specified, is intended only to suggest something of the possible ways in which adaptations can be made in tenure arrangements in response to the pressures for economic change and agricultural development.

Once a land tenure system is understood in terms of the elemental structure of the system, it thus becomes possible to consider the transformation of customary tenure systems into any one of a wide variety of general or national systems of tenure. The strategic point in this procedure is the recognition that the tenure of land is concerned, not with land as a physical object, but with the relationships between persons made operational by working rules which define the rights, duties, privileges and immunities of different classes of persons with respect to the use, occupancy and disposition of land. Naturally from the perspective of the land-holder or occupant of land it is the rights in the land which are valuable.

Thus, in common speech we may refer elliptically to this complex of right, duties, etc., as "rights in land". In terms of issues of policy, however, it should be noted that attention to tenure rights, presupposes a comprehensive system of right-duty relationships, made effective by sanctions of authority. If such

a schematic analysis is valid, it should be possible to develop classification of tenure systems in tropical Africa which can be compared across cultural or national boundaries.⁹

Once rights in land are systematically and clearly defined, it is then possible that such rights be made a matter of public record. The resultant "registration of title" may record virtually any combination of interests in land, from an ownership with the rights vested on one person to a multiplicity of interests in group ownership of land. The essential requirements for registration are that the area be clearly identified spatially and that the nature of the rights of all interested parties be explicitly stated.¹⁰

⁹As noted by Hoebel, Op. cit., Chap. 4.

¹⁰These aspects of customary tenures in Africa are considered fully by Frank M. Mifsud, "Customary Land in Africa," F.A.O., Legislative Series, No. 7, 1967. For another careful evaluation of the role of title determination and registration in an African land reform programme, see the Report of the Mission on Land Consolidation and Registration in Kenya, 1965-66. Republic of Kenya, 1966.

CHAPTER 4

INNOVATIONS IN LAND TENURE ARRANGEMENTS IN THE TRANSFORMATION OF TRADITIONAL AGRICULTURE

Since the traditional subsistence agricultural economies of tropical Africa have long histories as going concerns, the modernization of agriculture from this base requires both transformation and development. Unless the traditional systems are to be displaced and destroyed, they must be reconstructed. New arrangements are needed to give greater scope to the expansive and liberating influences of development. The argument thus turns to the consideration of avenues of adjustment and growth which are at least potentially operative in the modernizing transformation of agriculture. The tasks of innovations in tenure arrangements are to be understood in operative terms, as they are related to or are coordinated with these major avenues of growth.

Agricultural development in tropical Africa is being undertaken, for the most part, in new nation states where populations are growing at rates of 2.5 to 3 percent per year. Within this context, and deeply influenced by both population growth and the functioning of the modern states, the modernizing transformation of traditional subsistence systems of agriculture can be visualized as a process of reconstruction and development, in which a number of energizing influences work together.

These developmental influences, those potentials or sources for

growth, may be identified most simply by the use of a transformation model of agricultural development. A modern economy of agriculture can be defined as one in which the powers of the state are directed toward the design and effectuation of economic policies for agriculture which support the incorporation into the agricultural economy of (a) the application of science and technology; (b) investment and capital accumulation; (c) the productivity of specialization and exchange; and (d) the enlistment of the energetic participation of farm people together with the development of their abilities appropriate to the requirements of the current stage of development.

If one views this process of transformation from the perspective of traditional subsistence agricultural economies, rather than from the vantage point of a modern economic system, it is evident that these rudimentary agricultural systems were devised by the participants through adaptation to the "habits of nature", using home-made tools, with only a modicum of public order. Stated more systematically such traditional agricultural economies can be conceptualized by noting that, as a pure type, they are pre-scientific, pre-capitalistic, pre-market, pre-literate and pre-state types of economic systems.

This formulation when viewed as a time sequence, has the merit of identifying the principal avenues or sources of modernizing growth for agriculture. Thus the reconstruction and development of a

traditional subsistence economy of agriculture can be viewed as movement along the different avenues or sources of growth. Agricultural development programmes may emphasize the use of, with progress along the avenue of one or the other of these sources of growth; but there are definite limits to the developmental potential of any one emphasis of source of growth taken alone. If increases in agricultural production are attained by capital intensification and the adoption of new technology, without the achievement of market orientation, development effort will be frustrated; if market opportunities are seized through which only the surplus produced by traditional methods is sold, little growth is generated. If capital intensification, technological innovations and market orientation are attempted without the willing participation of farm people and the development of the requisite skills and abilities, either the development process will be stymied or the farmers habituated only to a subsistence type of agriculture will be pushed aside, casualties of economic progress. Little sustained progress can be made along any of these avenues--beyond some enclaves of modernity--without the effective use of the powers of the state, not only in the provision or support of public services, but even more importantly in the early stages of modernization, by the use of the powers of the state to establish the groundrules for the design and organization of the basic economic system.

It is this latter function of the state especially which is crucial for the modification of the systems of land tenure. In a pre-state system of agricultural economy the tenure systems are customary. These pre-state tenure systems can be modernized, only as the customary rules are either sanctioned by the state or replaced by new rules instituted by the state.

Viewing the development processes from the perspective of land tenure as in this chapter, it may be sufficient to consider the requirements of and potentialities for agricultural development in terms of the interrelations (a) between innovations in land tenure arrangements and the several avenues or sources of growth and (b) the role of the state in innovations in land tenure. It is not enough to consider whether and how customary systems of tenure restrict or retard agricultural development. The basic problem is that of how innovations in tenure are achieved which give positive support to the modernization of agriculture. If innovations in tenure arrangements are to be achieved, it seems necessary to consider tenure arrangements analytically as a set of rules, which rules may be accepted, possibly modified and sanctioned by the state, or they may be replaced by substitute rules to achieve innovations in tenure arrangements.

This observation implies that a system of tenure arrangements

viewed analytically, is constituted by a set of rules sanctioned by authority. There are two separable functions in such an endeavour. One is the selection of the rule to be sanctioned and the second is the authoritative sanctioning. The sanctioning authority in customary tenure systems is vested in the (local) group--the group holding the radical or sovereign ownership rights in the land. In modern tenure systems, the ultimate sanctioning authority is the state, although many local customary rules may be accepted and honoured. Customary tenure rules may be rejected by the state, and replaced, or displaced by legislation or decree. Or such customary rules may be honoured in principle--though modified somewhat--and sanctioned by authority of the state through either the legislature or the judiciary.

This attention to customary rules may seem to show too much deference to tradition, but this is not the point at issue. There are really two points; (a) The customary rules of tenure define the basic conditions of access to economic, even survival, opportunities in subsistence agriculture. Should these rules be abandoned, or replaced by an unrelated, even an alien, set of rules, the people on the land, the peasant cultivators--will almost certainly be cut adrift, confused and even resentful. (b) Analytically the rules of tenure, the rules which define the dimension of and the terms of

access to opportunities to use land and to invest in or dispose of rights in land, are the elementary components, the building blocks, of a system of tenure arrangements. Such elements, or components, can be combined in an almost infinite variety of forms--for either individual proprietorship or group systems of farming. The types of overall tenure systems adopted are matters of policy and political philosophy.

Tenure arrangements as a set of rules:

The basic elementary rules of customary land tenure arrangements for land used for cultivation in tropical Africa are approximately the following:

- (1) The basic or radical ownership of land is vested in the group; individuals have usufructory rights only, which rights may be claimed by persons by reason of their membership in the group.
- (2) Rights in land, both interests in the group ownership and the differential use rights, pass by inheritance. Since one is entitled to inherit his share of family land as a birth-right, one does not lose this right by living elsewhere than in the home village or even by being born elsewhere. With large families, plural wives, and migration all combined, it is obvious that these inherited claims to land become fractioned and even indistinct.

- (3) Opportunities to clear forested land and put it to use are allotted to individuals by the group of which they are members, the basic (and sovereign) rights of ownership being vested in the group. Such allotments have been made and are still made, in principle, according to definite customary rules by the authoritative head of the group. One acquires rights to such allotments as a privilege of birth into and membership in the group. Strangers (non-members) may be given allotments of land but such allotments do not carry the same privileges, especially regarding inheritance by one's children, unless the stranger is accepted as a member of the group--as through marrying a daughter of the village.
- (4) Once the land allotted is cleared and put to cultivation, the one who "mixes his labour with the soil" acquires rights to continued occupancy and use (which are voided by abandonment) which rights are inheritable so that his sons (as a general rule), and their sons after them, inherit the usufructory rights in the particular tract of land.
- (5) The basic rule in customary tenure is that rights in land so inherited are not alienable, therefore land may be neither sold nor mortgaged--without the consent of all

members of the family who have hereditary claims to rights in the particular piece of land.

Such a listing, though partial, may be sufficient to indicate the general setting of the problem of institutional innovation in tenure arrangements, when such rules are considered against the background of the major influences of change and the requirements for development which now characterize agriculture in tropical Africa.

Points of Tension: needs and opportunities for institutional innovation

Customary tenures in Africa, like the systems of traditional subsistence agriculture of which such tenure arrangements are an integral part, change under pressure of events. Some of these pressures, particularly those resulting from rights of inheritance under conditions of high rates of population growth and migration seem likely to resist and slow down changes in tenure systems; by contrast pressures which result from the push by entrepreneurs toward the economic development of agriculture, work toward the modernization of tenure arrangements in response to the needs for investment security, for shifts in land rights toward optimum uses of land, and for the realization of economies of scale. These latter pressures work toward making land alienable--in a market oriented agriculture.

In sum then, the changes in the rules of customary tenure induced by entrepreneurial production activities are those which would contribute to the efficiency and income capacity of producing firms: through providing security of expectation for investment; through supporting the economic mobility of land; and by permitting increases in size of farm, appropriate to at least the minimum scale of operations essential for the incorporation of modern technology; through attracting innovating entrepreneurs with prospects for sufficient income sufficient to enlist their interest and reward them for assuming the risks of managerial tasks and market specialization. All of these requirements, in so far as they relate to individualized patterns of land use and tenure, focus upon the need to make agricultural land more freely alienable--if agriculture is to be developed by firms which are sensitive to investments, costs and returns.

Under customary tenure arrangements, however, the rights to use land accrue to a person through membership in the group and particularly by inheritance, in accordance with his status in the group--as a birth-right. "My village" to an African is characteristically the village of his fathers, even though he has been born and lived all of his life elsewhere. The practice seems to be common that members of the family or kinship group who are

grandsons or even great grandsons of the village, whose fathers and grandfathers may have lived elsewhere, still retain a residual rightful claim to land for personal use should the need arise. However undifferentiated and attenuated this tenure relationship may be, in principle the right of inheritance seems to be recognized for at least two or three generations.

This basic rule, or principle, that no one shall be without land, thus serves both as a badge of status and as security against severe want by assuring every member of the kinship group that he may claim at least some land in his ancestral village for a subsistence opportunity. Since land is in principle inalienable these reservation birth-rights to return to the ancestral village and claim land have no cash or redemption value--even as there are no "carrying-costs."

Whereas the commercialisation of agriculture works toward making interests in land alienable or negotiable, inherited claims to a share of family land persist, as something of an infinite regress, as a handicap to the passing of a "clear" title in sales transaction. The pressures for change in tenure arrangements out of entrepreneurial efforts to achieve efficient production, thus come to a focus upon changes in the rule of inalienability.

Agricultural land in Africa has not been technically a part of the capital structure of agriculture, as a general rule. In

fact agricultural land has until recent times been considered to be virtually a free good--the use rights to which have been assigned to people on the basis of need--particularly for the production of food crops for direct consumption. However, the growth in population, the deterioration of the quality of cropped land, and access to markets for cash crops have all combined in the last few decades to make land scarce and therefore valuable. This in turn forces the consideration of land and especially improvements to land as objects of investment.

Traditional farming systems in tropical Africa are based upon the exploitation of natural fertility rather than investment. In the bush-fallow systems of farming, land is cultivated until the fertility is drawn down and then allowed to rest for a period of regeneration. Investment in land in this system is the effort required for clearing and preparing the land for cultivation. The product or achievement of such investment is the making of land useful for crops for a few years--usually not more than two to four years. With such short time horizons and the expected natural regeneration of fertility, the use of land could be loaned to strangers without impairment to the land resource base of the group. With the changed circumstances with land becoming recognizably scarce, it is becoming necessary to consider land improvement as an object of investment.

Although one (at least a visitor to Africa) gets the impression that little consideration is given to protecting, let alone enhancing, the physical qualities of soils, there are major adjustments underway which seem destined to force a change in attitude. The quality of the soil and vegetation is almost certainly deteriorating. Such a decline is being hastened by the growth in population which requires (in a traditional agriculture) that the area of land used for food crops must increase at least as rapidly as population. Since cash tree crops are likely to be planted on the most suitable soils, the production of food crops is relegated to the poorer soils. Taken together, in conjunction with the rapid disappearance of virgin lands, such activities can only result in the progressive shortening of the rest-period of fallow. In the more densely settled areas, land is now being subject to continuous cropping. While such changes may open the way for mechanized cultivation, they will also require that farming be done in ways which protect the soil. As this situation is approached, ways will have to be found for investment in the maintenance and improvement of the quality of the soil--to protect the structure and fertility, to control erosion, etc.

The first accommodation to investment, particularly in the forested portions of tropical Africa where tree crops have become valuable exports, came with the differentiation of rights to planted

trees from rights in land. Such a distinction was not necessary where persons planted tree crops on land which was rightfully their own by inheritance. But where "strangers" were permitted to plant tree crops, it was the usual practice that the person who planted trees on his own volition, and tended them to bearing age, acquired an equitable interest in the trees. This seems to be an extension of the principle of acquiring property rights "through mixing one's labour with the soil"--with the rule being that a person who plants a crop has a "natural" right to harvest the crop. For tree crops--a right running for the life of the trees may extend for decades.

At least in the cocoa growing areas of tropical Africa, property rights in trees have acquired something of an independent status--distinct from the ownership rights in land. However, characteristically a stranger is not allowed to plant tree crops on the land of others, without explicit consent.

In areas where land is used for cultivation, claims to land become attached to particular tracts. Thus inheritance practices of approximate equality of inheritance, lead to a progressive fragmentation of land--and where there is extensive out-migration from rural areas, to an absentee ownership. Since land which one does not use has traditionally been loaned to other family members for their use, if needed--particularly for food crops--the rudiments of alienation of land are a part of customary tenure arrangements;

where land is loaned (or borrowed) the privileges of short term use pass from one party to the other.

With the planting of tree crops--as cocoa--the time dimensions of land use were changed, with the result that new rules had to be devised. As noted above, property rights have developed in trees, as distinct from the rights in the land. Thus cocoa trees, at least, may be pledged as security for a loan, and there are instances in which cocoa trees as such have been sold.¹¹

Thus the gradual shift toward alienation of land, if this it be, is moving along two different avenues of adjustment. The time honoured custom of pledging the use of land to another party, for a consideration, with a privilege of redemption by members of the family of the pledger having the privilege of redemption by repayment of the consideration, approximates a sale of land when the consideration is sufficiently high in relation to the value of the land, to make redemption unlikely. Thus the claims to ownership of land acquired by the pledgee and his family may become de facto ownership, particularly as the passage of time tends to serve as something of a "statute of limitation" on the right of redemption.

¹¹ R. O. Adegboye, "Procuring Loans through the Pledging of Cocoa Trees." Journal of Geographical Association of Nigeria, Vol. 12, Nos. 1 & 2, December 1969.

Obviously on economic considerations alone any investment in land improvements which would enhance the value of the land during the period of possible redemption would increase the desirability of redemption by the pledgee or members of his family.

But so far, there have been relatively few transactions in the rights in land which approximate the transfer of "fee-simple" interests from seller to buyer--to the best of our knowledge. This is not for want of willing buyers. Although land under urban uses, including residential sites in rural villages is bought and sold¹², these practices have not spread to agricultural land.

Although all agricultural land is owned, the ownership rights are diffused among an extended group of relatives. In principle, agricultural land may be sold--in a transaction approximating a sale in fee-simple (to use the Western term) but only if all interested members of the kinship group formally consent. Since this is difficult to achieve in actual practice, there is the risk by the purchaser of "buying a law-suit" rather than a farm. Quite obviously, some sort of simplified procedure would be needed, as a condition of passing claim title expeditiously and surely by which few representatives of the family group could sign away the claims

¹²With the sales rationalized in terms of being man-made objects, however, the title passed may be subject to group claims also as in the case of agricultural land. See C. K. Meek, Land Tenure, Op. cit., p. 222.

of all family members. This device has been used somewhat.

However before rights in land can be transferred, they must be objectively known. Since the ownership boundaries of land--or claims to ownership--are known only to informed residents of the area, the possibilities of disputes over boundaries and rightful claims to land through occupancy and use, compound the uncertainty of title inherent in the "corporate" or group type of ownership which prevails in Africa.

Since the strongest restraints against the sale of land in Africa are evidently rooted in the need for security by members of extended families, it is to be expected that the beginnings of a market for long term interest in land would develop within family groups.

The fact that the basic ownership of land is vested in the group, gives the whole complex of rights in land a social character. Thus an individual who would either sell land or acquire land of his own beyond that due to him by inheritance, must somehow come to terms with the procedures of the group. Even so, this does not mean that these social relations must be an insuperable bar to alienation.

If the inherited birth-right interests in land are cherished for the promise of security which they provide, the tenacity with which such claims are held, especially by non-farming, non-resident

members of the family, may be modified by objective changes in the conditions of security. In short, a family group may be able to provide security to such members more effectively by means other than the recognition of their inherited claims to land.

Something of this sort is happening with respect to the family support of young men from the country-side who go to the cities seeking careers. It is a common practice that relatives send money to these "school-leavers" perhaps for years.

With a simple extension of this principle, one's family could help such non-resident members acquire capital for the establishment of a business, or the purchase of a home. Should this be construed as an offset to the birth-right interests in family lands, the beginnings of procedures would be established which, implying the divisions of a family estate rather than the partition of family lands, could grow into a device for closing out the contingency claims to land to which one is entitled by birth.

Such adaptations of family procedures, with the correlative modification of the rules of customary tenure, would in fact report changes in the objective condition of security. As Africa becomes urbanized, the privileges of claiming a share of land in one's ancestral village to which he could return and practise subsistence cultivation, will in fact offer a less and less acceptable form of

security. Thus, the prospects for the institution of procedures which would make the alienation of agricultural land acceptable to the members of the "corporate" ownership--to use Elias' phrase--is conditional upon the achievement of dependably secure economic alternation elsewhere.

CHAPTER 5

CUSTOMARY TENURE UNDER PRESSURES FOR CHANGE

Modifications in the systems of customary tenures in tropical Africa have come from two main sources: (a) the impact or imprint of European law, administration and education especially through the rule of metropolitan countries; and (b) adaptation to the needs for the economic development of agriculture. The current and prospective rapid rates of growth in population promise to add a third major influence for change. Each of the factors relates to the tenure system in a different manner.

Although such modernizing development of agriculture as has occurred has as a general rule come about through the addition of cash export crops to the traditional food crop economies, the particular forms which such modernization has taken vary not only according to location, facilities for transportation, soil and climate, but also in response to the developmental policies of the metropolitan country.

If so, an understanding of the present stage of development, especially of the newly-formed nations of tropical Africa, requires careful study of the historic ties to other countries. Such ties are of special importance in understanding the ways in which the customary tenure systems have come under pressure. Whether future adjustments in tenure arrangements will follow the procedures for

change implicit in the current systems of law and administration is an open question, for the stage is set in tropical Africa for major experiments in systems of farming and land tenure.

Even so, it would seem useful to have a case history type of interpretation of the ways in which customary tenure systems have been modified by administrative policies and agricultural development as these activities have operated in particular countries. Accordingly in this chapter we present a brief interpretation of some of the ways in which the customary tenure system in Nigeria has undergone modification in recent decades--together with an attempt to identify some of the specific issues at the cutting edge of change. Although this interpretation is admittedly inadequate and incomplete, it may suggest something of the kind of adjustments which are under way--particularly in African countries which have come under the direct influence of British law and administration.

The land tenure system of Nigeria is to be distinguished from customary tenures in other parts of tropical Africa, more by the ways in which it has been adapting to pressure for change than by the uniqueness of the original characteristics. Several authorities on the land tenure system of Nigeria have noted the underlying drift toward alienation of land. Meek noted:

With the introduction of money economy and of European legal conceptions of real property and of contract, coupled with the demand for land for the cultivation of commercial crops and also (in commercial centres) for

building purposes, the alienation of land by way of sale had become firmly established in Lagos, and in most parts of the surrounding colony, by the end of the nineteenth century. Elsewhere in southern Nigeria sales of land had become common also in many areas which had been subjected directly or indirectly to European influence. In Abeokuta for example land had been freely bought and sold throughout the closing decades of the nineteenth century.¹³

It does not seem appropriate, in this statement, to attempt an exhaustive review of the literature on the manner and extent of the acceptance of alienation of land. It seems more appropriate to attempt to understand the nature and source of the changes in the rules of customary tenures in Nigeria, in ways which may have some suggestive, comparative value for the larger community of tropical Africa. We begin by consideration of the influence on tenure arrangements emanating from the British presence in Nigeria.

The historic ties with Britain are of special significance for institutional innovation. This relationship gives the problems of institutional changes in Nigeria much common ground with all of the once British Africa. Three aspects of British policy have been especially significant for tenure policy. (1) The decision to accept and honour customary or traditional tenures in rural areas; this in

¹³C. K. Meek, *Land Tenure*, *Op. cit.*, Chapter 25, "Sale of Land," p. 216. It may be noted that no distinction is made in the reference to Abeokuta between urban and rural lands. Other scholars commenting on the drift toward alienation include: Galletti, Baldwin, & Dina, *Nigerian Cocoa Farmers*, Oxford, 1956, p. 107; and elsewhere P. C. Lloyd, *Yoruba Land Law*, especially p. 326 & ff.; and Oluwasanmi, *Agriculture and Nigerian Economic Development*, Oxford, 1966, p. 40-47.

effect assured the continued ownership of agricultural land by Nigerians and precluded the establishment of foreign-owned enclaves of export agriculture. (2) The institution of a system of superior courts in Nigeria on the British pattern, together with the acceptance as a basis of modern land law of the English rules for conveyancing. Briefly "the reception into all parts of Nigeria of the common law of England and the doctrines of equity and, (except, since 1959, /in the/ western and mid-western states where the Property and Conveyancing Law 2959, applies), the English statutes of general application in force in England on 1st January 1900.¹⁴ (3) The assumption of the sovereign ownership of land in Lagos colony. By this acquisition, a western type of fee simple ownership was established in the colony while a traditional system of tenure continued in other parts of the country.

Although British administration secured titles to the lands of the colony through a purchase of ceding transaction with the principal chief, the basic operating principle of validation was evidently that of the assertion of sovereign ownership by right of conquest. In this instance the basic structure of ownership rights was changed--through the implicit vesting of the radical ownership in public authority. Elsewhere and especially in rural lands, this

¹⁴C. U. Ilegbunne, "The Place and Effect of English Conveyancing in Dispositions of Land under Nigerian Customary Law" (mimeo), p. 5. This analysis includes citation to and digests of scores of leading cases.

shift has not occurred.

In the traditional tenure systems of Africa, including Nigeria, the basic or sovereign ownership of land is vested in the (local) group. A transfer of ownership in this system must, in principle, be sanctioned by all members of the owning group who hold hereditary interests in the land. In the British system the basic or sovereign rights of ownership vest in the crown--reflecting the feudal antecedents of land law. As the terminology of tenure connotes, land is held of the sovereign. Within this system a transfer of rights in land, the lesser interests of leaseholds as well as the more inclusive rights of fee simple ownership, can be effected by agreements between a willing buyer and a willing seller, arrived at within the rules of the game so that the transaction is sanctioned by public authority.

Although customary tenures prevail over most of Nigeria, in the urbanized areas, even under customary law, lands and especially buildings and other improvements to land are bought and sold more or less as an object of commerce. This difference in customary law between urban and rural lands, in the attitudes toward and provisions for sale of lands, rests in part upon the recognition that the man-made improvement may reasonably be bought and sold.

According to Meek:

There is in general a distinction between bush farm land on the one hand and (a) home farm or garden land, and

(b) house-land on the other. The former, /bush-land/, as the source of the people's food, is regarded ultimately as community property (though various degrees of private rights are admitted), while the latter /garden-land & house-land/ are purely private property since their value is due primarily to the improvements effected by the owners And so, while rights in bush farm-lands /i.e., land used in a bush-fallow system/ are customarily regarded as usufructory only and unsaleable, rights to house property and the gardens attached are proprietary rights at the free disposition of their owners.¹⁵

These different sets of practices: (a) for bush-fallow land, (b) urban properties under customary law, and (c) the Lagos area, stand both as evidence of different concepts of tenure rights and as possible sources of suggestion regarding ways of modernizing the tenure system, particularly at the critical point of alienation.

The depersonalization of tenure arrangement which economic development within a market economy requires, was achieved in one master move in the assumption of title to Lagos island by the British authority, particularly as coupled with the subsequent public administration of land use by means of private property--through sales in fee simple and by long term leases. But a somewhat similar process of depersonalization and individualization of interests in land has been worked out for urban land within the rules of customary tenure in other areas.

However, the central point to be made here is not that

¹⁵C. K. Meek, Land Tenure, Op. cit., p. 222.

customary tenure arrangements in Nigeria are destined to move toward the type of fee simple ownership established in the former colony. Rather the establishment of modernized systems of tenure relations in the capital area (Lagos), together with the acceptance of British education, land law and the system of superior courts become strong influences working to modify the whole system of legal and administrative arrangements for land use and occupancy in the direction of individualized and depersonalized relationships, such as obtain where land is an object of purchase and sale. The strategic issue in the transformation of customary tenures, therefore, is that of the shifts in modifications in attitudes toward and practices regarding alienation of interests in land.

In Agriculture, the production of annual food crops was the major traditional agricultural activity in Nigeria, supplemented in the south by the harvesting of tree crops growing wild in the forest. Correlatively the basic tenure practices which evolved were of two kinds: (a) those which assured usufructory rights to cultivators, for particular tracts of land which were compatible with both group ownership of the land and a bush-fallow system of land use and (b) those which provided orderly procedures for the harvesting of tree crops--such as palm--which were recognized as belonging to the community as a whole.

Such modernization of agriculture as has occurred in Nigeria

has centered for the most part on the production of export crops. Exportation began in southern Nigeria with the harvesting of trees growing wild--especially palm. Cocoa production became important soon after the close of the first world war.¹⁶ As planted tree crops became important, the traditional distinction between rights in trees and the rights to use land was extended to the recognition of a distinct form of property rights in cocoa trees, as an example. As Meek has summarized the issues:

It is a well-known principle of many systems of land tenure that rights over land do not necessarily extend to the trees standing on the land. This is so in Nigeria. One person, or a group of persons, may exercise rights over an area of land, and another person, or group of persons, over the trees growing in that area The general rule regarding the ownership of economic trees is that planted trees belong to the planter and his heirs, while wild (or self-sown) trees belong to the community which owns the land, whether that be a village, or lineage or family group.¹⁷

To establish a cocoa plantation requires a planting on land which has been cleared of most of the forest cover, and cultivation for some six to eight years. Furthermore, cocoa thrives only on certain types of soil which are concentrated in a few areas. This combination of location with a labour intensive type of investment, provided opportunities for strangers who were willing to become entrepreneurs in cocoa as well as to undertake the arduous

¹⁶ Galletti, Baldwin & Dina, *Nigerian Cocoa Farmers*, Op. cit., Chapter 1.

¹⁷ C. K. Meek, *Land Tenure*, Op. cit., pp. 172-173.

labour of clearing land and establishing plantings of cocoa.

One of the basic principles honoured by the traditional tenure system in Nigeria has been that of permitting anyone who plants a crop to harvest the product. The practice was the counterpart of another, whereby anyone in need of land for the production of food crops might be and, when land was plentiful, usually was given an allotment of land upon which to plant food crops. Such use rights had short time horizons--with land not usually cropped more than three or four years--after which the land would be expected to revert to bush-fallow. In the case of tree crops, however, the time horizon for the use of the land and harvesting the crop extended for decades. Thus it became a common rule that no one was allowed to plant trees on borrowed land, since "the ownership of trees may usually be presumed to imply ownership of the land."¹⁸ This prohibition against planting trees was applied more rigorously to strangers than to persons who were members of the family or village group.

A common practice evolved whereby a "stranger" might be permitted to plant cocoa trees by giving formal and continuing recognition that he had no ownership rights in the land;--through the payment of a small annual tribute--called ishakole in Yoruba. Such a tribute, paid according to prescribed ceremonies, is an

¹⁸ibid., Footnote 1, p. 172.

acknowledgement of the continuing ownership of the land by the person or family granting the privilege of planting cocoa trees. Such payments of tribute are also evidence of a deeply personal relationship--essentially of the subservience of the strangers. For example, the amount of tribute may not be a fixed and definite amount year after year, for the life of the trees, except in cases where the payment of ishakole is a part of a close personal relationship.

Instances abound in Nigeria where the annual tribute for the privilege of planting cocoa trees is varied year by year becoming in effect a claim against a share of the crop. In this way the arrangements for the payment of tribute, by becoming depersonalized and given an economic dimension, are in effect becoming "tenancy" arrangements. This interpretation is accepted by Adegboye in the observation that, "The planning horizon of the tenant becomes clouded when he is restricted to the cultivation of certain crops only. He is even more frustrated when the amount of tribute to be paid has to be determined by the mood of the landlord at the material time the tribute payment is due."¹⁹

It may be inferred from such evidence that the underlying drift is toward situations where payment of tribute by strangers is

¹⁹R. O. Adegboye, "The Need for Land Reform in Nigeria," Nigerian Journal of Economic and Social Studies, Vol. 9, No. 3, 1967, p. 341.

becoming sufficiently depersonalized and businesslike that arrangements between landlords and tenants might emerge. At least the seeds of this change have already been planted here.

Economic trees may be used as collateral for a loan. The practice called "pledging" is similar to the pledging of land. The general rule in both instances is that the use of the property, i.e., the income realized from the use is considered to be interest payment without effect upon the amount of the principal. This type of arrangement whereby the lender holds the property to use as his own until the loan is repaid, is more like a bailor-bailee relationship in law--than a creditor-debtor arrangement. But the former type of transaction could develop into the latter, as has occurred in the economic history of western countries. Also there is the privilege of redemption of land or trees by repayment of the original loan--with the privilege extending to the heirs of the pledger. In the case of pledging of land, this arrangement becomes virtually a defacto sale of land by the pledger where the amount of money borrowed is so large in comparison with the value of the land as to make redemption unprofitable. While it is not possible to generalize precisely on the frequency with which pledged-land becomes, in effect, a permanent sale of land, such occurrences are not rare. Thus there is economic pressure from personal financial needs as well as from the economic adjustments inherent in agricultural development

by individual entrepreneurs for arrangements whereby the economic value of landownership can be objectified and realized through alienation.

In a recent study of pledging of cocoa trees, Adegboye reported that the pledging of such trees was resorted to mostly to raise money to meet family expenses--pre-eminently for cash to pay for the education of children. Although the lender (pledger) has full use of the trees during the life of the loan, foreclosing upon pledged trees was not widely practised. In only one community did he find the general expectation that the customary courts would sanction foreclosure. For the most part the pressure for repayment came from the consensus of the community.²⁰

In the discussion of this chapter thus far we have been considering some of the adaptations or modifications in tenure arrangement which are occurring in Nigeria, basically in response to (a) the investment requirement for agricultural development, and (b) attempts to fund for immediate use some of the capitalized economic value imputable to land and trees on the basis of current and prospective uses. These adaptations push toward making land alienable, thus permitting greater economic mobility.

There are other adaptations working toward similar outcomes.

²⁰R. O. Adegboye, "Procuring Loans through Pledging Cocoa Trees," Op. cit.

As modernized production of domestic food crops becomes more profitable in response to population growth and urbanization, the prospects are that economies of scale will justify larger farms than at present. Ownership and inheritance practices produce fragmented holdings of land. With out-migration of some heirs these tracts of land can be, and are being, used by farmers of the area to increase the size of their farm units. Land belonging to non-residents is usually available for use by relatives remaining in the village--at least for the production of food crops. But here too, and especially where strangers become possible users, it is to be expected that economic practices which change the time horizon of users, as the planting of permanent crops or investment in physical improvements of land, will lead toward the formalization of the lending or borrowing of land into some form of tenancy.

Similarly as investment in land improvements becomes necessary to maintain or enhance the productivity of land, there are major advantages, if not economic necessities, in having agricultural land become a part of the capital structure of agriculture. Without this, no land-mortgage credit is possible.

The logic of economic growth in Nigerian agriculture thus seems to be modifying the system of customary tenure relations toward depersonalized modes of land alienation. It seems a reasonable interpretation of this experience, that this process of

modification is deeply influenced by the systematizing influence of British law and public administration.

Any major shift toward greater economic mobility of farm land must come to terms, somehow, with the deep-seated rule against the sale of land in customary tenure. This resistance is rooted in the group or family character of the basic (root) ownership of land. In this aspect of the tenure system, as noted above, one acquires rights in land according to membership and status in the family, which claims to ownership are the counterpart of the security provided by the extended family. Consequently, the difficulties of extinguishing the birth-right claim to ownership stand as the greatest bar to alienation of land.

Viewing this problem from the substantive, economic perspective, the issue of security seems paramount. If so, changes in the objective condition of economic security resulting from urbanization and migration seem likely to be a prelude to modification in attitudes and practices regarding inherited rights in village lands. The privilege of claiming land to use if one needs it, gives assurance that one can always return, should the need arise, and engage in a subsistence agriculture--if only with a small allotment. Such an opportunity would surely be worth far more, however, to someone skilled in arts of subsistence farming, than to one who either never learned the skills or who lost such abilities through

long disuse. Furthermore, to a family habituated to urban living, an opportunity to return to subsistence farming might well be considered no opportunity at all.

Of significance also is the deep sense of the value of security among Nigerians. It is to be expected, therefore, that they are likely to forego the advantages of economic citizenship in the traditional family group until a civil service appointment, however menial, or other type of employment provides security.

The suggestion, or inference, which comes from such considerations is that once alternative forms of social security are achieved through prospects for succeeding at farming as well as through industrial employment with pensions and civil service retirement incomes, the reservation subsistence opportunity provided by inherited claims to family lands will weaken, and make easier the institution of procedures by which inherited interests in family land are terminated. An attitude of this sort by members not resident in the village, would in turn facilitate the acquisition of land on a permanently secure basis for sons of the village who were engaged in farming. Such procedures, in terms of inheritance would mean that the rights of inheritance could be realized through settlement of estates rather than by a physical sharing or the partitioning of family lands.

Although the long-run outlook is for urbanization and the

growth of many large cities in Nigeria, the present rate of population growth is so high at 2.5 to 3.0 percent, that there is virtually no possibility of providing enough non-farm employment opportunities within the next two or three decades to absorb the total increase in population. If so, the security provided by the extended village family system is likely to be cherished for years to come--with the implicit resistance to wider degrees of freedom of alienation.

Perhaps the most that can be concluded from an exploratory discussion of pressures for change in tenure practices, is that although the traditional system is inadequate, the pathway to a more appropriate modern system is not at all clear. The conclusion of a recent analysis of procedures for alienation of land in Nigeria, was essentially that only a decisive action by government could avoid deep uncertainty regarding conveyancing in land. The suggestion was: "Finally, we submit that a state can, by a direct unequivocal legislative enactment create non-customary tenures in land subject to customary law, such tenures to subsist whether concurrently with or in substitution to tenures under customary law."²¹

This much seems clear, as implied in this quotation, the only way in which the customary tenure system of Nigeria can be modified

²¹C. U. Ilegbunne, Op. cit.

to give genuine support to agricultural modernization, is through the use of the powers of government. Customary tenures are older than the state, and cannot be modernized without clearly defined public policies. In such policies, however, the political and economic philosophy of those who govern may point in any one of many directions. It is unlikely, however, that any land policy can be effectively consistent with democratic procedures and public order in Nigeria which does not in some way recognize and accommodate to the social security needs which have been met by the traditional system of land tenure.

CHAPTER 6

FRONTIERS OF TENURE MODERNIZATION IN TROPICAL AFRICA

The African systems of traditional agriculture and customary tenure are destined to be changed; the open questions are those of how and in what direction? The systems must be modified, despite their long service to the African people, because they are designed to assure security and group survival rather than the support of economic progress. With population growth ratios of 2 to 3 percent or more, economic development must be achieved if the great mass of the people are to avoid sinking more deeply into the morass of poverty. This need for economic development is pressing African countries toward investment-oriented exchange economies. Systems of agriculture based upon the exploitation of natural fertility are becoming increasingly inadequate.

As the studies of scores of careful investigators attest, hundreds and even thousands of systems of customary tenure have been developed in Africa, as the people have devised ways to deal with each other and to live together amicably, under a great variety of geographical and social conditions.²² Even so there are enough

²²See Daniel Bielwyck, "Land Holding and Social Organization," in Herskovitz & Harwitz, Economic Transition in Africa, London, 1964, pp. 99-112.

common features, or principles at work, so that it is meaningful to speak of the African concepts ownership and possession of land.²³

Given the complex diversity of customary tenure systems, and the limited capacity for economic growth implicit in traditional agriculture, two inferences seem warranted.

- (a) The required reconstruction of customary tenure systems must be extensive and even radical; and
- (b) The necessary redesign and reconstruction of the tenure systems can be achieved only by use of the authority and powers of the state.

Such preconditions and necessities for agricultural development are at least a partial explanation for the many bold adventures in institutional innovation in tropical Africa during the past 25 years.

We propose in this chapter to note a few of the major experiments in tropical Africa with new forms of tenure. The remarks may be made more comprehensible by a schematic review of ways in which the use of the power of government can be related to alternative forms of land holding.

²³As T. O. Elias--The Nature of African Customary Law, Op. cit. Chapter IX.

Tenure policy in a modern nation-state is public policy. This implies or recognizes that one of the major aspects of national economic development with respect to land tenure is the emergence and acceptance of the public interest in land or a public point of view toward land use and occupancy.

In terms of the traditional social structure of African societies, this means a marked degree of absorption of the lesser interest of the community, tribe and family into a wider field of shared interdependence and power. People may continue to cherish membership in their kinship and communal groups, but a new sense of national citizenship becomes necessary. Technically, effective citizenship means the endowment, or the clothing, of individuals with shares in the sovereign powers of the state.

As argued in preceding sections of this brochure, a modernizing transformation of customary tenure systems can be achieved only by use of the powers of the states, customary tenure systems being pre-state. This means that the sanction of government will supercede the traditional (and local) group sanctions in the enforcement of the working rules of tenure--even though countless local customary rules may be accepted and honoured by public authority.

The use of the powers of the nation state, including those

shared with subsidiary local governments, entails or engenders a simplification and unification of the tenure rules--whether by displacement, consolidation or a selective acceptance and strengthening of particular customary rules of tenure. Stated differently the modernization of systems of customary tenure rules by nation states requires that some, even much, of the rich localized variety of tenure arrangements so carefully noted by anthropologists, will be submerged in the more comprehensive, simplified, publicly sanctioned systems of working rules. This follows inexorably from the necessities of the extended areas of interdependence, increased mobility of resource use, and uniformity in the rules of transactions required by a modernized interdependent economy.

II

Although most of African agriculture today operates within the traditional systems of customary tenures, this is giving way to different national land policies. Several general kinds of policies for modifying tenure systems may be noted. These experiments in tenure modernization deserve much more careful and exhaustive consideration than can be undertaken here.

- (1) In a number of countries, particularly in East Africa, the customary tenure systems are being converted into individualized freehold tenures with private ownership of land, such

as developed in western economies and more recently in Japan.

- (2) In other countries, a policy of land nationalization is being undertaken with the avowed purpose of establishing group or cooperative farms under long term lease arrangements--as in Tanzania.
- (3) There are a number of instances in which the state has assumed ownership of the land and established state farms--as islands in a sea of traditional agriculture based upon customary land tenure arrangements. State farms of this sort have been established in Ghana and by Development Boards in Nigeria.
- (4) There are a number of settlement schemes in which experiments have been undertaken in both systems of farming and of tenure. The farm settlement schemes of Nigeria are an instance.
- (5) Some remarkable innovating experiments in systems of farming and land-holding have been instituted where agricultural development was undertaken by the flow irrigation of previously arid lands. The Gezira scheme in the Sudan is, no doubt, the most famous of those in tropical Africa. The Gezira has many similarities in technical design to irrigation-development projects in North Africa, particularly in Morocco and Egypt. The Sudan scheme is based on a share-cropping type of tenancy, with centrally directed management.

- (6) There are instances of cooperative farms established by actions of the land owning group, presumably by sanctions of the state authority--in which the land is owned collectively in a cooperative manner, with individual participants becoming members of the production cooperative. Experimentation with this type of tenure arrangement is being undertaken in Kenya among the cattle-herding Masai. Cooperative farms have been established elsewhere in Africa, as in Nigeria, but no systematic study of them is known to us.

This brief listing, though most incomplete, may suggest something of the variety of imaginative innovations in land tenure arrangements which have been undertaken in tropical Africa. Some of the programmes in those general categories are commented on in more detail in the following pages.

A. From customary tenures to individual freeholds

The first, and probably most successful innovations in the modification of customary tenure systems have been through the introduction of a western type individualized fee-simple system of landownership in East Africa. The introduction of an individual freehold type of landownership in this area is partly a reflection of the kind of systematic administration provided by the British in the pre-independence era and partly a consequence of processes

of individualization of the agricultural economic system implicit in a market-induced (or market-oriented) type of modernization. A fee-simple type of ownership was first introduced in the region in Uganda in 1900. More recently the major beginnings of a conversion to an individualized fee-simple type of landholding has been introduced in Kenya and Malawi.

(i) Uganda

The transformation of the traditional system of landholding in Uganda was initiated by British administration in 1900, in the Buganda district of present-day Uganda by the "sudden introduction of individual freehold into a tribal territory in which land had been held by chiefs and notables in feudal tenure from their King (Kabaka)."²⁴ Subsequent enactments introduced compulsory registration of land titles and the undertaking of cadastral surveys.²⁵ Similar arrangements involving smaller areas of land were worked out soon thereafter with the Kings of Ankele and Toro in 1900 and 1901.²⁶

²⁴A. I. Richards, "Some Effects of the Introduction of Individual Freehold into Buganda,"--in African Agrarian Systems, D. Biebuyek, R. Ed., p. 267. The new system was provided for in the Uganda Agreement of 1900; and subsequently modified by the Buganda Land Law of 1908. This system is popularly known as "Mailo" tenure.

²⁵Ibid. p. 270.

²⁶The Permanent Secretary, Ministry of Lands and Mineral Development, in "Land Policies and Problems in Uganda." FAO Development Centre on Land Policy and Problems for East and Central Africa, Uganda, 1960, mimeo, p. 1.

The original allotments of land were granted to important political figures as large estates. By the Uganda Agreement (1900) "the three Regents for the then infant Kabaka /King/, received 40-60 square miles in freehold tenure; 20 of the chiefs got 20 or more square miles; 150 others got 8-12 square miles and the majority /of traditional authorities/ 2 square miles."²⁷ In this way, "3,700 recipients of land were immediately freed from these political duties to the King."²⁸

Commenting on these early programmes, Lawrance observed that this was an

example of an attempt by the British Administration to blend traditional forms of tenure with modern western concepts. You will find, for instance, in various parts of Uganda parcels of land held by Africans on registered title, dealings in which are governed by English law, side by side, with parcels of land held on customary tenure, dealings in which are governed by native law. Even on land held in registered private ownership and subject to English law, landlord and tenant relationships are governed by laws embodying native custom.²⁹

With the conversion of political status into economic assets, new kinds of economic incentives were introduced into the agricultural economy. Parts of the original grants were sold off to raise

²⁷Richards, Op. cit., p. 266.

²⁸Ibid., p. 272.

²⁹J. C. D. Lawrance, "A Pilot Scheme for Grant of Land Titles to Uganda (Kigeze District)," *Journal of African Administration*, Vol. 12, 1960, p. 8.

cash. This provided the beginnings of a land market, with opportunities for enterprising persons to acquire land by purchase. This stimulated the commercialization of agriculture, particularly the introduction of cotton as a cash crop, produced in large part by hired immigrant labour.

This experience, which can only be briefly noted here, provides something of a controlled experiment on the significance of tenure in agricultural development--with individual freehold tenure existing side-by-side with the traditional or customary systems of land-ownership. Land held under freehold tenure, being subject to purchase, sale and hypothecation as collateral for mortgages, has become a part of the financial capital structure of agriculture.

It is notable that although the lands were granted originally in large tracts, peasant cultivators have purchased small farms--acquiring a higher social and political status than the neighbours who remain customary tenants. Thus although the system of individual freeholds was introduced as a part of a political settlement--the measures adopted both contributed to economic development and provided opportunities for some enterprising small farmers to improve their economic and social status.

Recently the Government of Uganda has undertaken a pilot scheme in another part of the country for the conversion of customary landholdings into freehold tenures.

The Uganda Government has made it clear that individual titles will be granted only where there is both a demand and a need for them. Need becomes apparent where the density of population is high and land is consequently in short supply; or where valuable crops are grown; or where individualization of tenure, as shown by widespread and frequent sales of land, is complete; or where a marked increase in litigation shows that customary tenures are breaking down.³⁰

(ii) Kenya

Kenya has embarked upon a national policy for the individualization of land tenures. This development was forecast in the Report of the East Africa Royal Commission 1953-55 which concluded that "Policy concerning the tenure and disposition of land should aim at the individualization of landownership, and at a degree of mobility in the transfer and disposition of land which, without ignoring existing property rights, will enable access to land for its economic use."³¹

Public programmes for individualization of tenure were initiated in the central highland area among the Kikuyu people subsequent to the concentration of the people in a few areas, as a part of the programme for the pacification of the Mau-Mau repressings.

The general policy was enunciated by Mr. Swynnerton, Commissioner for Agriculture, in the well-known Swynnerton Plan--the

³⁰ Ibid., p. 136.

³¹ East African Royal Commission Report 1953-55, Chapter 23, "Tenure and Disposition of Land," p. 346.

"Plan to Intensify the Development of African Agriculture in Kenya":

Sound agricultural development is dependent upon a system of land tenure which will make available to African farmers a unit of land and a system of farming whose production will support a family at a level, taking into account prerequisites derived from the farm, comparable to other occupations. He must be provided with such security of tenure through an indefeasible title as will encourage him to invest his labour and profits into the development of his farm and as well enable him to offer it as a security against financial credits as he may wish to secure from such sources as may be open to him.³²

The land consolidation programme inaugurated under the Swynnerton Plan was achieved by the use of committees or councils of local leaders, who knew intimately the areas and nature of the interests in land held by the local people. Over time, the interests in land had been individualized through partition, subdivision and inheritance. Typically the holding of land by one individual was fragmented. These separate holdings were evaluated in some way, sufficiently to permit judgements by the committees of local elders that a particular contiguous area of land in the locality to be assigned to an individual was of equivalent value and usefulness as all the land previously held in scattered tracts by this person.

Once the process of hearing and adjudication was completed the single contiguous tract of land was allotted or assigned to the particular farmer. So identified, the land owned by one person was

³²Quoted in Report of the Mission on Land Consolidation and Registration in Kenya, 1965-66, p. 6.

surrounded by a live hedge which grew to mark the outer boundaries of each holding. When the hedges had grown sufficiently they were photographed from an aeroplane--the resulting print serving as survey evidence of the location, boundaries, and size of tract; the photograph formed the survey basis for official registration of title. The farmers on these newly consolidated holdings were then offered advice on farm planning and farming systems.³³

The success of this programme in stimulating agricultural development has led to a major extension of consolidation and registration. This original programme as well as the extended programme as proposed, are discussed in a recent Report of the Mission on Land Consolidation and Registration in Kenya, 1965-66.³⁴

The assessment of the original programme by the Mission is: "In the final event, perhaps the most telling assessment of these effects lies in the changed face of the countryside, which for any resident of Kenya whose memory goes back ten years and who has lived through the process of change accompanying land tenure reform in the Central and Eastern provinces, must indeed present a vivid picture. Mud huts and scattered subsistence patches have given way to proper small farms, with neatly prepared fields and good houses and buildings, with thriving stands of cash and subsistence crops occupying all or most of the arable land."³⁵

(iii) Malawi

Recently Malawi has embarked upon a programme for converting

³³Discussed in Elspeth Huxley, The New Earth, London, 1960.

³⁴Republic of Kenya, 1966.

³⁵Report, p. 22.

customary tenure rights into recorded individual titles. In cases where the family holds undivided interests in a tract of land, the land may be registered in the name of the head of the family.³⁶

The rationale of the Malawi land law by President Banda, formulated while he was serving as Minister of Agriculture, was succinctly summarized by Mr. Simpson:

It had become quite clear to him /Dr. Banda/ that the customary way of holding land in Malawi and the methods of tilling the land were entirely out of date and totally unsuitable for the economic development of the country, and he went on to say that he had reached the conclusion that if Malawi was to develop economically on an agricultural basis, the first thing to do was to change the system of landholding and the second was to change the method of land cultivation.³⁷

Although the system of individualized landholdings appears to be proving effective in these East African countries, it does not follow that such a system is equally appropriate for the whole of tropical Africa. These systems of freehold ownership were introduced by the British, in forms deeply similar to those which have developed in Britain--and transferred to the U.S.A., Canada and other new countries founded by emigrants from Britain. It is to be noted that these highland areas of Africa have a temperate climate. It may be, also, that adaptation was facilitated by

³⁶S. R. Simpson, "New Land Law in Malawi," Journal of Administration Overseas, Vol. VI, No. 4, October, 1967.

³⁷Simpson, Ibid., p. 224.

movement from or modifications of a previously feudal-type of customary tenure--a point noted explicitly by Richards.³⁸

The recent Mission Report on Land Consolidation and Registration in Kenya observed that individual ownership of land had already evolved in Kenya. In a summary statement, essentially supporting the Lugardian thesis regarding the emergence of individualized rights in land out of the holdings of the clan or social group to which the individual belongs:

The result is that in strict customary law none of these rights /to build a house, grow a crop, alienate the land, or even exclude other persons/ may be exercised without the consent of everyone else in the group to which the individual belongs As development takes place, the individual tends to acquire more and more freedom from group control until it may be said that individual ownership has been established.³⁹

Where individualized customary ownership has been achieved by gradual adaptation, the task of converting such ownerships into legally sanctioned properties is quite obviously much simpler than if the conversion were to be from less differentiated customary group ownership to legally sanctioned individual holdings--such as would be the general case in West Africa should this type of conversion be attempted.

Regarding the process of individualization the Mission

³⁸ Richards, "Some Effects," Op. cit., p. 267.

³⁹ Report, p. 5.

concludes:

Individualization of tenure is a process which takes place spontaneously in areas where there is economic development or where pressure on land no longer makes it as freely available as air and water, though it still remains just as indispensable to human existence; in any case the Kenya Government is already committed to speeding the process. We would, however, observe that individualization of tenure strikes at the very heart of tribal society.⁴⁰

Whatever one's views on the merits of the individualization of tenures under African conditions, it will probably not be disputed that the adoption of the British type of property and tenure relations in these East African countries, facilitated greatly the task of working out complete sets of rules regarding the ownership, alienation and mortgaging of land. A time-tested system could be adopted--more or less wholesale--with the risks of innovation minimized by requiring only modifications and adaptations within a fully articulated system, rather than a long period of trial and error in devising appropriate particular procedures and instruments.

B. A Policy of Land Nationalization with Long-Term Leases and Farm Settlements

With independence and the subsequent formation of Tanzania through the merger of the states of Zanzibar and Tanganyika, tenure policy (of the latter state) shifted away from the earlier programmes of establishing freeholds (under German and later British administra-

⁴⁰ Ibid., p. 6.

tion) to a policy of long-term leaseholds within a nationalized ownership of land.

Such a shift in policy was indicated in a White Paper by the Government of Tanganyika in 1962, in which it was announced that both freehold lands and lands held under formally granted rights of occupancy were to be converted into leaseholds. The underlying argument, as the following quotations may attest, was that under freehold tenure arrangements, the agricultural potential of the country was not being realized.

Having regard for the importance of agriculture in the national economy at present, Government has already taken steps toward procuring the development of land to the greatest possible extent and with the greatest possible speed. In particular, it has vigorously urged all Africans occupying land under native law and custom to develop their land to the full and where practicable to expand their holdings. In consonance with this campaign, Government announced in the National Assembly its decision to convert freehold titles to leasehold. Since the date of the announcement Government has come to the conclusion that some land held under rights of occupancy issued before the Land Regulations of 1948 were applied is still inadequately developed. Government has therefore decided to take steps to procure the development of such land also.⁴¹

The general design of the Land Regulations /of 1926 and 1927/ was to require the spending of specific sums on scheduled improvements within specified periods of time. Some occupiers spent the required sums on residential buildings, thereby complying with the regulations and thereafter spent

⁴¹Land Tenure Reform Proposal, 1962, para. 1.

virtually nothing developing the land. As a consequence, the regulations were ineffective and some of the land held on such rights of occupancy remain underdeveloped.⁴²

Summarizing the tenure policy of Tanzania for agricultural land, the country report to the FAO World Land Reform Conference of 1966 noted: "All land in Tanzania is public land and belongs to the State. It is vested in the President on behalf of the whole community. This is in keeping with the people's conception of landholding which knows nothing of individual ownership. All people have usufructory rights only and ideally, the one who can best use it, holds the land."⁴³ "Under customary law the ownership was considered to be vested in the tribe's leaders and elders for the use of the whole tribe. Thus basic ownership has been assumed by or surrendered to the State."⁴⁴

Within this general policy for the administrative direction of land use, Tanzania has placed strong emphasis upon farm settlement schemes. "At present the biggest numbers of settlements are drawing farmers from the same localities and are mainly planned to consolidate the holdings of participating farmers, emphasis is on block cultivation and on the production of cash crops in preference

⁴²Ibid., Para. 36.

⁴³Country Paper, Tanzania, RU:WLR-C/66/11 April 1966, Part 2, "Land Tenure in Rural Areas of Tanzania," p. 8.

⁴⁴Ibid, p. 9.

to subsistence cultivation."⁴⁵

The transformation of agriculture being attempted through such settlement schemes, "is directed to the sparsely developed areas, and consists in general of grouping farmers and resettling them in more favourable conditions, introducing supervised crop rotations, mixed farming, and other supporting measures essential in achieving proper production on these lands. Such a policy aims at the creation of villages which become centres of social and commercial development."⁴⁶ A systematic evaluation of the success of this supervised cooperative approach to agricultural modernization would be most useful if such were available.

C. Group Farming

In order to have farms of large enough size to make mechanized farming feasible, Uganda has undertaken to establish a new system of cooperative group farms. By 1965 32 such group farms had been initiated, with an average membership of 94 farmers per group, cultivating an average of 280 acres per farm of which 65 percent was planted to cotton.⁴⁷

⁴⁵ Ibid., Part 1, p. 5.

⁴⁶ Ibid., p. 7.

⁴⁷ Country Paper, Uganda, "The Group Farming Scheme in Uganda," RU:WLR-C/66/25 FAO 1966, p. 5.

The group farm scheme was initiated as the best system of mechanized agricultural development most suitable to Uganda conditions The present policy concerning land tenure on group farms, is that group farms are established without changing in any way the existing customary land tenure arrangements. In areas where the land traditionally is more or less owned by the clan, the planning and establishment of group farms is relatively straightforward. In areas where the entire area is held by individuals, though each person has his boundary clearly marked, there have invariably been considerable problems. The lack of security of tenure in group farm schemes generally has even been made much worse in such cases.⁴⁸

D. Farm Settlement Schemes of Nigeria

The farm settlement schemes of Nigeria were designed with several complementary objectives: centrally they were projected in the hope that the new systems of farming would demonstrate the feasibility, including profitability, of farms of larger scale than is characteristic of the area, upon which the benefits of modern technology and farming methods would be demonstrated, thus making a career in farming attractive to "school-leavers". In the basic theory of design production activities would be undertaken cooperatively on individually allotted holdings of land, under the general managerial and administrative guidance of a farm settlement officer. Principally prospective settlers have been recruited in the area of the settlement, from the youth who have completed elementary schooling. The recruits subsequently spent some two years in a farm institute to learn modern farming. One of the

⁴⁸ Ibid., p. 4 and p. 7.

attractions for the young settlers has been the prospect of the eventual ownership of his allotment of land (characteristically much larger than the traditional farms of the area). Individual farm settlement schemes vary in size from 2,000 acres to 8,000 acres.⁴⁹ Each settlement scheme was designed to follow a particular system of cropping or livestock raising deemed suitable for the locality. Thus on some schemes the central emphasis is upon tree crops; in others tree crops combined with arable crops and poultry, and so on.

It is not possible here to do more than point to the main features of the schemes, noting particularly the kind of innovations undertaken in systems of farming and the correlative tenure arrangements.⁵⁰

As noted in the Country Report, 1966, the establishment of the settlements has encountered many problems. Since the areas were

⁴⁹ J. O. Akinudemiwa: Country Paper, Nigeria, "The Farm Settlement Scheme in Western Nigeria," World Land Reform Conference 1966, FAO, Rome, p. 4.

⁵⁰ The Nigerian Farm settlement schemes have been subject to extensive review and analysis, with many of the interpretations critical and adverse, especially on the high cost per settler. See Bibliography on Land Tenure in Africa, FAO, Rome 1970. However the farm settlement idea retains strong support in Nigeria.

already occupied by traditional agriculture, farmers were displaced. Procedures for securing title to the land have not worked precisely; in consequence some claims for compensation of former owners remain unsettled, while ownership of the land allotment by the settlers remains only a future possibility.

One of the more difficult problems has been that the establishment of the tree crops requires investment for several years before any possible returns. Although the housing for settlers is far above average for rural communities residence is isolated by Nigerian standards. Many other facilities are minimal.

E. Comment

These brief comments on innovation in systems of farming and tenure in tropical Africa are admittedly both inconclusive and inadequate. Many notable experiments have not even been mentioned. However, even these few notes may suggest something of the quality, extent and significance of the many attempts in tropical Africa in the past two or three decades to break out of the mould of traditional agriculture and particularly of customary tenures and move on toward a condition of greater freedom and productivity for people on the land.

It is to be doubted whether any of these experiments have worked out as well as the originators had hoped. But much

experience is being gained and such experience can be most valuable if carefully interpreted and assessed. In simple fact, traditional agriculture and customary tenures in tropical Africa has no future. New systems of agriculture will be devised. It is this necessity, not the perfection of the schemes, which gives significance to the bold attempts at organizational innovation now under way.